

**In the Privy Council**

No. 103 of 1939

**ON APPEAL FROM THE COURT OF APPEAL  
FOR ONTARIO**

BETWEEN

EDGAR F. LADORE, BURLEY W. BENNETT, HORACE W. CUNNINGHAM and HARRIE R. DINGWALL,  
 suing on behalf of themselves and all other ratepayers of the Corporation of the Town of Walkerville;  
 And suing on behalf of themselves and all other holders of debentures of the Town of Walkerville;  
 And suing on behalf of themselves and all other holders of debentures of the Walkerville-East Windsor Water Commission;  
 And suing on behalf of themselves and all other holders of debentures of the Essex Border Utilities Commission;  
 And suing on behalf of themselves and all other holders of debentures of the Walkerville Hydro-Electric Commission;  
 And suing on behalf of themselves and all other holders of Local Improvement Debentures issued by the Town of Walkerville;  
 And suing on behalf of themselves and all other holders of debentures issued by the Essex Border Utilities Commission and chargeable against the ratepayers of the Town of Walkerville,

(PLAINTIFFS) APPELLANTS,

and

GEORGE BENNETT, HARRY J. MERO, W. DONALD MCGREGOR, RUSSELL A. FARROW;  
 THE CORPORATION OF THE TOWN OF WALKERVILLE;  
 THE CORPORATION OF THE CITY OF EAST WINDSOR;  
 THE CORPORATION OF THE CITY OF WINDSOR;  
 THE CORPORATION OF THE TOWN OF SANDWICH;  
 THE ESSEX BORDER UTILITIES COMMISSION;  
 THE WALKERVILLE-EAST WINDSOR WATER COMMISSION;  
 THE WATER COMMISSIONERS OF THE CITY OF WINDSOR;  
 THE BOARD OF WATER COMMISSIONERS OF THE TOWN OF SANDWICH;  
 THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF EAST WINDSOR;  
 THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF WINDSOR;  
 THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF WALKERVILLE;  
 THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF SANDWICH;  
 THE CORPORATION OF THE CITY OF WINDSOR, and  
 THE WINDSOR UTILITIES COMMISSION, bodies alleged to have been incorporated pursuant to the provisions of Statutes of Ontario, 1935, Chapter 74, being the City of Windsor (Amalgamation) Act, 1935; and  
 THE ATTORNEY-GENERAL, OF THE PROVINCE OF ONTARIO,

(DEFENDANTS) RESPONDENTS.

CASE FOR THE RESPONDENTS, CITY OF WINDSOR and  
THE WINDSOR UTILITIES COMMISSION

Record.  
P. 101. 1. This is an appeal from the judgment of the Court of Appeal for Ontario delivered on the seventeenth day of May, 1938, whereby the appeal of the Appellants was dismissed with costs. The appeal to the Court of Appeal was from a judgment of Mr. Justice Hogg at trial dated the twenty-sixth day of July, 1937, whereby he dismissed the action with costs.  
P. 90.

2. Prior to the 18th day of April, 1935, the Cities of Windsor and East Windsor and the Towns of Walkerville and Sandwich existed as separate municipalities, when the Legislature of the Province of Ontario passed an Act known as The City of Windsor (Amalgamation) Act, 1935, (hereinafter referred to as the Amalgamation Act) amalgamating the said four municipalities under the name of The Corporation of the City of Windsor. By virtue of the said Act the amalgamation became complete on the first day of January, 1936, upon which date the Act declared that each of the said old municipalities "shall then be dissolved and cease to exist and the new City shall take their place."  
P. 237.  
P. 238.

3. Prior to the said date utility services, such as water, and electricity, were being provided by certain local boards and commissions in each municipality, and all of these were dissolved by the Amalgamation Act and in their place and stead was established a commission to be known as "The Windsor Utilities Commission." Similarly, in addition, public and separate school boards were established.  
P. 247, 16.  
P. 240, 12 (1).

4. Although the paragraphs of the Statement of Claim are complex and therefore, somewhat confusing, yet in no place is there any suggestion that the Provincial Legislature had not the power to pass legislation, standing alone, amalgamating the municipalities in question, a fact not surprising in view of the definite provisions of Class 8 of Section 92 of the British North America Act. However, in order to lay some foundation paragraph 25 of the Statement of Claim attacks the Amalgamation Act on the ground that the legislation was passed for ulterior motives, namely "for the purpose of arranging the liabilities of the said municipal corporations," and, that, therefore, the legislation is in fact bankruptcy legislation and ultra vires. Shortly stated, the answer to this allegation takes three forms:—first, the duty of the Court is to interpret the law, not to impute motives nor question the wisdom or expediency of the legislation; second,—the municipalities do not in any sense come within any of the provisions of the Bankruptcy Act and there is nothing in the Amalgamation Act itself which in any sense can be considered as being of the "pith and substance" of bankruptcy legislation; and, third,—if the legislation could be said to take the form of bankruptcy legislation yet it constitutes only legislation with respect to civil rights in a field unoccupied by Dominion legislation. 40

P. 214.  
P. 5.  
P. 6. 5. After setting forth in Paragraph 26 of the Statement of Claim that the Amalgamation Act of 1935 and the Amending Act of 1936 provided for the amalgamation of the municipalities and constituted a finance commission which, among other things, was to undertake the preparation and submission of a plan for funding and refunding the debts of the amalgamated municipalities, the Ap-

pellants proceed to allege in Paragraph 27 that these Statutes, together with the Department of Municipal Affairs Act of 1935, are all ultra vires because they deal with municipalities and local boards which the Appellants say are bankrupt and insolvent and because the Legislature had no power to amalgamate the municipalities or interfere with the legal rights of the debenture holders. Shortly stated, the answer to these involved attacks may be put as follows: Record.

10 (a) The municipalities were neither bankrupt nor insolvent in fact, nor could they be declared so to be under any of the provisions of the Bankruptcy Act.

(b) So far as the rights of the debenture holders are concerned they are rights created by Statute of the Provincial Legislature and are always subject to its further legislation.

6. In order to provide closer supervision over the finances of the new City of Windsor and its local boards, the Amalgamation Act further provided for the creation of a body to be known as The Windsor Finance Commission, to be composed of three persons appointed by the Lieutenant-Governor in Council, and after the election of the first City Council, the Mayor elected was for the time being an ex officio member of the Commission. P. 238, 5.  
Sec. 5 (5).

20 7. Among other duties set out in the Amalgamation Act, The Windsor Finance Commission was directed to "undertake the preparation and submission of a plan for funding and refunding the debts of the amalgamated municipalities upon the general basis that the debt of each of the amalgamated municipalities shall be discharged by the imposition of rates upon the rateable property in that area of the new City which formerly comprised such municipality." P. 239, 7 (e).

30 8. The Windsor Finance Commission existed from May, 1935 to August, 1936 when it was dissolved pursuant to the provisions of the City of Windsor (Amalgamation) Amendment Act 1936, and "all acts, transactions, contracts, matters and things done, made, entered into or performed by or in the name of The Windsor Finance Commission or purporting so to be . . . are hereby ratified and confirmed and declared to be and to have been legal, valid and binding for all purposes and upon all persons. . . ." P. 243, 2.  
P. 244, 7.

9. This last mentioned Act was to come into force and effect on a day to be named by the Lieutenant-Governor by his proclamation. This proclamation was made on the sixth and became effective on the eighth day of August, 1936, and thereupon the supervision over the new City, theretofore exercised by The Windsor Finance Commission, was, by the said Act, transferred to the Department of Municipal Affairs. P. 187.  
P. 243, 2.

40 10. In performance of its duty as above outlined The Windsor Finance Commission did prepare a refunding plan—but not then acted upon—introduced at the trial and admitted subject to objection, and certain extracts therefrom are printed in the record. P. 139.

11. The writ in this action was issued on the twenty-ninth day of April,

Record. 1936, and the trial of this action took place in September, 1936, but no effect was given to any refunding plan until June 15, 1937, when the Ontario Municipal Board made an order bringing into effect a refunding plan based on, though not co-extensive with, the refunding plan prepared by The Windsor Finance Commission. To anticipate or overcome the objection that this action is premature the Appellants' solicitors have printed this order in the record notwithstanding the strong objections of these Respondents embodied in a letter dated November 23rd, 1938, written to them prior to the printing of the record, and in which the following paragraph appears:—

“We also strongly object to the inclusion in the Case of the concluding 10 number, namely 16, (in the preliminary index) being the order of the Ontario Municipal Board respecting the refunding of the debts of the amalgamated municipalities, the order having been made after the action was commenced and indeed after the trial. This should be no part of the case and if it is actually included we shall feel obliged to make a motion before the Privy Council to have it stricken from the Record.”

The order should, therefore, be now stricken from the record of proceedings.

P. 6. 12. The above becomes important by reason of the alternative pleas contained in Paragraphs 28 to 31 of the Statement of Claim wherein the Appellants claim that if the said Acts are ultra vires of the Legislature of 20 the Province of Ontario, then the refunding plan as prepared, interfered with the lien, hypothec and charge in their favour on the assets of the corporations and in the case of local improvements a lien, hypothec and charge upon the lands specially charged with the cost of the work, and the legislation authorizing such a plan is, they say, ultra vires of the Provincial Legislature and in consequence null and void. The answer to these allegations is first:—that The Windsor Finance Commission was directed only “to undertake the preparation and submission” of a refunding plan, and at the time of the trial of this action no legal effect had been given to the plan by the Amalgamation Act or by any other authority, and the liens, hypothecs or charges referred to, if they existed, 30 had been in no way affected in consequence of the legislation attacked; second:—that in any event the said plan has been ratified and confirmed by legislation (2 Geo. VI, cap. 45).

13. Even if this contention were still open to the Appellants, then the Appellants are in this dilemma: that none of these Respondents are responsible for the plan. What possible remedy, therefore, have the Appellants against these Respondents, or what possible judgment against these Respondents could, in consequence, be given in the Appellants' favour.

P. 6. 14. The present appeal is concerned only with the correctness of the judgment of the Court of Appeal for Ontario in affirming the judgment of the 40 Trial Judge, and the Court of Appeal was not and this Court should not be concerned with some other action which the Appellants may have the right to bring founded upon new developments, such as may be inferred from the allegations contained in Paragraph 28 A of the Statement of Claim.

15. In any case no declaratory judgment can be made in respect of events not yet happened, nor can any declaratory judgment be made against these Respondents in respect of a refunding plan with which they had nothing to do, either in its preparation or in making it legally effective. Record.

16. In Paragraph 5 of the Prayer in the Statement of Claim the Appellants asked for a declaration that they and the other debenture holders are entitled "to a lien, charge or hypothec on the assets and revenues of the corporations by whom or on whose behalf the said debentures were issued." The answer to that is that this so-called lien, charge or hypothec was imposed by virtue of legislation passed by the Province of Ontario under its powers granted by the British North America Act, and what the Legislature has given it may take away under the same authority, and such legislation, therefore, cannot be said to be ultra vires. P. 7.

17. If, notwithstanding the above, it may be held that the Appellants may still ask for a declaration respecting the validity of the refunding plan because the plan deals with interest, these Respondents say that this claim was not raised by the pleadings nor argued at the trial but was first taken in the Court of Appeal, and that in any event there is no dealing with interest rate in general, but incidentally only in the legislation seeking to restore the municipalities to a sound financial condition, and the legislation is, therefore, in this respect within the Provincial legislative powers. 20

18. The Appellants also for the first time in the Court of Appeal set up the claim that the refunding plan was invalid because debentures held outside of the Province of Ontario were affected and that, therefore, the legislation dealt with civil rights without the Province. Not only the refunding plan, but the mere fact of the amalgamation of the municipalities had this incidental effect and these Respondents submit that the exclusive powers given to the Province under said Class 8 of the British North America Act cannot be rendered unavailable because some debenture or debentures may happen to be held by persons living outside of the Province. No such result was ever intended to flow from that Act. 30

19. In any event the objection that the Amalgamation Act embodies bankruptcy legislation must be confined entirely to Section 7 (c) of the Act, and if the Amalgamation Act can in any respect be held to be bankruptcy legislation and beyond the powers of the Provincial Legislature, then that subsection only is affected and the whole Act, of which it forms a part, cannot in consequence be declared ultra vires. P. 239.

20. These Respondents, therefore, say that the judgment of the Court of Appeal for Ontario affirming the judgment of the Trial Judge was right and should be affirmed. 40

## REASONS

### BECAUSE:

1. The amalgamated municipalities were not at any time in fact bankrupt or insolvent.

2. In any event municipal institutions do not come within the provisions of the Bankruptcy Act.
3. The legislation attacked was in no sense bankruptcy legislation and the motive for or expediency of the passing of the legislation cannot be enquired into.
4. The Provincial Legislature has exclusive jurisdiction over municipal institutions in the Province and may, therefore, at its will create, unite or dissolve them, and may to an unlimited extent provide for their management.
5. The Provincial Legislature may authorize the issue of debentures by 10 municipal institutions and may define and change the rights of the holders thereof in respect thereto.
6. As incidental to its jurisdiction over municipal institutions the Provincial Legislature has power to interfere with and alter the terms of debentures whether held within or without the Province of Ontario.
7. The refunding plan, if it can be considered as of any effect in this action, in no way deals with interest in a general sense, but only as incidental to the exercise by the Province of its exclusive jurisdiction over municipal institutions.
8. The legislation in question was passed not in any sense for bankruptcy 20 purposes, but its sole purpose was to assist the financial condition of the municipalities, and not in any sense to wind up their affairs and distribute their assets.
9. No foundation has been laid for a declaration of rights as asked for by the Appellants.
10. No leave to bring this action was obtained by the Appellants from the Ontario Municipal Board as required by Sec. 30, s.s. (1) of The Department of Municipal Affairs Act, 1935.

J. H. RODD,

L. Z. McPHERSON,

of Counsel for The City of Windsor  
and

The Windsor Utilities Commission.

# In the Privy Council

No. 103 of 1939

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On Appeal from the Court of Appeal for Ontario

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## BETWEEN

EDGAR F. LADORE, BURLEY W. BENNETT, HORACE W. CUNNINGHAM and HARRIE R. DINGWALL, suing on behalf of themselves and other ratepayers and debenture holders of the Town of Walkerville and other Corporations . . .

(Plaintiffs) Appellants

and

GEORGE BENNETT, HARRY J. MERO, W. DONALD MCGREGOR, RUSSELL A. FARROW, THE CORPORATION OF THE TOWN OF WALKERVILLE; (and other corporations), THE CORPORATION OF THE CITY OF WINDSOR, THE WINDSOR UTILITIES COMMISSION AND THE ATTORNEY-GENERAL, OF THE PROVINCE OF ONTARIO

(Defendants) Respondents

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## CASE FOR THE RESPONDENTS

THE CITY OF WINDSOR and  
THE WINDSOR UTILITIES COMMISSION.

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BLAKE & REDDEN,  
17 Victoria Street,  
Westminster, S.W.1.